

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

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| THEODORE STREATER | § | |
| v. | § | CIVIL ACTION NO. 9:011v68 |
| RICK THALER, ET AL. | § | |

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS' MOTION TO DISMISS
FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

The Plaintiff Theodore Streater filed this lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Streater's lawsuit concerns claims that he has been wrongly billed by the TDCJ inmate phone system for calls which are dropped, and that he suffered retaliation after complaining about this. The Defendants Rick Thaler and Charles Bell filed a motion to dismiss the lawsuit based upon failure to exhaust administrative remedies.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be denied. The Magistrate Judge examined the grievances filed by Streater and concluded that these were sufficient to adequately alert prison administrators to the problems, regardless of whether or not Thaler and Bell were personally named in the grievances. *See Johnson v. Johnson*, 385 F.3d 503, 517 (5th Cir. 2004) (noting that grievances could alert administrators to the problem regardless of whether or not the grievance names anyone). No objections were filed to the Report of the Magistrate Judge; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of

plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in the case as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 28) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendants' motion to dismiss for failure to exhaust administrative remedies (docket no. 24) be and hereby is DENIED. It is further

ORDERED that the Defendants Rick Thaler and Charles Bell shall have 40 days from the date of this order in which to file a dispositive motion addressing the merits of Streater's claims, should they choose to do so.

So **ORDERED** and **SIGNED** this **16** day of **February, 2012**.



Ron Clark, United States District Judge